

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte HANS-PETER WILFER

Appeal No. 2004-0603
Application No. 09/713,353

ON BRIEF

Before ABRAMS, NASE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's rejection of claims 12 and 14-22, which are all of the claims pending in this application. Claims 12, 15 and 17 were amended subsequent to the final rejection (see Paper Nos. 10 and 11) and claim 13 was canceled.

We AFFIRM-IN-PART.

BACKGROUND

The appellant's invention relates to a case for musical instruments comprising a shell, a device for carrying the case and attachable to the shell, such as shoulder belts and handles, and an element for receiving a communication device provided on the device for carrying the case (specification, pages 1 and 2). Representative claims 12 and 19 are reproduced, infra, in the opinion section of this decision.

The examiner relied upon the following prior art references in rejecting the appealed claims:

Ekman et al. (Ekman)	4,764,962	Aug. 16, 1988
Gormley et al. (Gormley)	5,711,469	Jan. 27, 1998
Fowles et al. (Fowles)	6,123,240	Sep. 26, 2000
		(filed Oct. 20, 1998)
Fiedler	EP 756,266	Jul. 30, 1997
Miyako et al. (Miyako)	9-154618	Jun. 17, 1997 ¹
(Japanese patent publication)		

The following rejections are before us for review.

Claims 12, 14, 15² and 17-21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Fiedler in view of Miyako and Ekman.

¹ We derive our understanding of the Fiedler and Miyako references from the translations, provided by the USPTO, copies of which have been mailed to appellant (see page 3 of the answer, Paper No. 15). The Miyako reference was referred to by the examiner and appellant as "Nobuhide."

² Claim 15 had been rejected in the final rejection (Paper No. 9) as being unpatentable over Fiedler in view of Miyako, Ekman and Richards (U.S. Pat. No. 4,237,341). In light of the amendment (Paper No. 10) filed subsequent to the final rejection, the rejection has been changed to reflect the amendment to claim 15.

Claim 16 stands rejected under 35 U.S.C. § 103 as being unpatentable over Fiedler in view of Miyako, Ekman and Fowles.

Claim 22 stands rejected under 35 U.S.C. § 103 as being unpatentable over Fiedler in view of Miyako, Ekman and Gormley.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 20) for the examiner's complete reasoning in support of the rejections and to the brief and reply brief (Paper Nos. 14 and 16) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

We turn our attention first to claim 19, which reads as follows:

19. A case for musical instruments, comprising a shell;
means for carrying the case and attached to the shell; and
means provided on the carrying means for receiving a
communication device, wherein the receiving means
comprises a closable pocket having an insertion opening.

Fiedler discloses a box 1 for holding a musical instrument and straps 3, 4 connected via a hook buckle 20 with straps 10, 11 worn by the person carrying the box

as illustrated in Figure 1. As best seen in Figures 1 and 2, the upper ends of straps 3, 4 are attached to the box at an upper portion thereof, the upper ends of straps 10, 11 are attached to the box at an intermediate portion thereof and the lower ends of straps 3, 4 are attached to a lower portion of the box, with the hook buckle 20 resting on the person's shoulder so that it may take up a shoulder bag (see Figure 1 and page 11 of the translation). The examiner concedes that Fiedler lacks "means provided on the carrying means for receiving a communication device, wherein the receiving means comprises a closable pocket having an insertion opening," as called for in claim 19.

Miyako discloses a carrying case for a mobile telephone or the like designed for attachment either to a belt (Figures 1 and 6) worn on slacks or to a "backpack or other shoulder applying belt" (translation, page 8), as illustrated in Figures 5(C) and 7. The carrying case has an upper opening which is closable by a narrow covering piece 2, with openings on either side thereof for passage of, for example, an antenna (translation, page 15).

Miyako, with its teaching of attaching a carrying case for a mobile telephone, cassette tape recorder, camera, binoculars or the like (translation, page 10) to the shoulder straps of, for example, a backpack, would have provided ample motivation to one of ordinary skill in the art at the time of appellant's invention to attach such a carrying case to one of the straps 3, 4, 9, 10 of Fiedler's musical instrument holding box to attain the self-evident advantage of convenience in carrying the mobile telephone or

the like device, thereby arriving at the subject matter of claim 19, either with or without the additional teachings of Ekman.

Ekman further evidences that it was well known at the time of appellant's invention to attach a pouch 18, with a cover 18b, to shoulder straps for storage of a Walkman-type radio or cassette recorder. Thus, in view of the combined teachings of Fiedler, Miyako and Ekman, it would have been obvious to one of ordinary skill in the art to provide on one of the shoulder straps 3, 4, 9, 10 of Fiedler, a carrying case or pouch of the type taught by Miyako or Ekman to store a mobile telephone, cassette recorder or the like device conveniently to arrive at appellant's invention as recited in claim 19.

Appellant argues on page 11 of the brief that none of Fiedler, Miyako and Ekman "discloses or suggests providing a closable pocket on carrying means for a case for musical instruments or any other case for that matter." We do not find this argument persuasive. First, Miyako does disclose providing a closable pocket on the shoulder strap of a backpack, which is, in our opinion, a case. Moreover, nonobviousness cannot be established by attacking the references individually when, as in the instant case, the rejection is predicated upon a combination of prior art disclosures. See In re Merck & Co. Inc., 800 F.2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986).

For the foregoing reasons, we conclude that the combined teachings of Fiedler, Miyako and Ekman are sufficient to have suggested the subject matter of claim 19.

Thus, we shall sustain the rejection of claim 19, as well as dependent claims 20 and 21 which appellant has grouped with claim 19 (brief, page 5), as being unpatentable over Fiedler in view of Miyako and Ekman.³ We shall also sustain the rejection of dependent claim 22 as being unpatentable over Fiedler in view of Miyako, Ekman and Gormley since the appellant has not challenged such with any reasonable specificity (See In re Nielson, 816 F.2d 1567, 1572, 2USPQ2d 1525, 1528 (Fed. Cir. 1987)) and in fact has indicated that claim 22 stands or falls with claim 19 (brief, page 5).

We turn our attention next to independent claim 12, which reads as follows:

12. A case for musical instruments, comprising a shell;
means for carrying the case and attached to the shell; and
means permanently attached to the carrying means for
receiving a communication device,
[w]herein the carrying means comprises two shoulder
belts, and wherein the receiving means is permanently
attached to one of the shoulder belts on an outer side of the
one of the shoulder belts.

None of the references, Fiedler, Miyako and Ekman, relied upon by the examiner in rejecting claim 12 teaches or suggests a permanent attachment of a receiving means to a shoulder belt. We find no such teaching, in particular, in Ekman, the reference alluded to by the examiner on page 4 of the answer as teaching a permanent attachment of a means for receiving an audio device to a carrying means. While

³ See 37 CFR § 1.192(c)(7) and In re Young, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991); In re Wood, 582 F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978).

Ekman discloses securement of the pouch 18 to strips 30 by stitching,⁴ the straps 22, 24, which correspond to the claimed “carrying means”, are simply placed within loops defined by the strips 30 and thus are not permanently secured thereto. See the last paragraph of column 2 of Ekman. Accordingly, the pouch 18 cannot reasonably be considered to be permanently attached to the straps 22, 24.

In light of the foregoing, the combined teachings of Fiedler, Miyako and Ekman would not have suggested permanent attachment of a receiving means to one of the shoulder belts of Fiedler’s device to arrive at the subject matter of claim 12. It thus follows that we cannot sustain the rejection of claim 12, or claims 14, 15, 17 and 18 which depend therefrom, as being unpatentable over Fiedler in view of Miyako and Ekman. Inasmuch as Fowles, relied upon by the examiner for its teaching of a protection foil (electromagnetic shield 54) in a pouch for a communication device (pager), likewise fails to teach that which is lacking in the combination of Fiedler, Miyako and Ekman, we also cannot sustain the rejection of dependent claim 16 as being unpatentable over Fiedler in view of Miyako, Ekman and Fowles.

CONCLUSION

To summarize, the decision of the examiner to reject claims 12 and 14-22 under 35 U.S.C. § 103 is affirmed as to claims 19-22 and reversed as to claims 12 and 14-18.

⁴ The examiner’s characterization of such an attachment as permanent is certainly reasonable, especially in light of appellant’s disclosure on page 7, in lines 4 and 5, of the present specification.

No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

NEAL E. ABRAMS
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

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